



PROCEDURAL PRESUMPTION OF AUTHORSHIP

ART. 15 OF THE BERNE CONVENTION

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Art. 15(1) of the Berne Convention

*In order that **the author** of a literary or artistic work protected by this Convention **shall**, in the absence of proof to the contrary, **be regarded as such**, and consequently be entitled to institute infringement proceedings in the countries of the Union, **it shall be sufficient for his name to appear on the work in the usual manner**. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.*

=> INCENTIVE FOR RIGHTHOLDERS TO ATTRIBUTE AUTHORSHIP

National Models

- VERBATIM TRANSPOSITION
- COMBINATION WITH OTHER PROCEDURAL PRESUMPTIONS, e.g.:
 - Registration and/or deposition (with national authority, a CMO or notary)
 - Affidavit
 - Ownership of original material
- NONE TRANSPOSITION (registration model instead)
- Copyright notice may but must not trigger the presumption in the sense of Art. 15

Conflicting Indications of Authorship

- Earlier indication prevails (e.g. Germany)
- Registration prevails (typical for common law countries)
- None presumption prevails and plaintiff bears burden of proof

Benefiting other Rightsholders?

- Yes, presumption is extended to other "owners" (typical for common law countries but also in case law of some civil law countries)
- No, only authors are covered by the presumption (typically for civil law countries)
- Art. 15(2,3) has special provisions dealing with cinematographic and anonymous works which may benefit corporations as well

Covering other Subject Matter?

- No covenant on neighbouring rights contains express procedural presumptions (even if dealing with formalities and rights management information)
- Most countries extend the presumption to all neighbouring rights, notably the EU Enforcement Directive

Application in the Online Environment

- Traditional models found in national laws are designed for the offline world
- Current practice (the „usual manner“) is not dictated by producers of content but global services which often even claim not to be users (social networks and other platforms) => out of contractual control by author/publisher
- **Disappearing author** => relevance not only for right of attribution but also for management and enforcement of copyright
- ALAI global survey on author identification practices in online environment (tinyurl.com/15Berne)